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***HB0351 by *Hardaway. (SB0509 by *Kyle, *Ford, O..)**

Adoption - Clarifies that a parent who attempts to support or visit a child has not willfully abandoned the child for the purpose of termination of parental rights in either foster care or adoption situations; clarifies that foster care agreements must be entered in any foster care arrangement, including private arrangements. - Amends TCA Title 36, Chapter 1, Part 1; Title 37, Chapter 2, Part 4 and Title 47, Chapter 50, Part 1.

Fiscal Summary for *HB0351 / SB0509

Increase State Expenditures - \$1,300,200 Other Fiscal Impact - Increase Federal Expenditures - \$721,300

Bill Summary for *HB0351 / SB0509

Under present law, abandonment is grounds for terminating a person's parental or guardian rights to a child in order to make that child available for adoption. Present law considers the following to be abandonment: for a period of four consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent or guardian of the child who is the subject of the petition for termination of parental rights or adoption, the parent or guardian either willfully failed to visit or willfully failed to support or willfully failed to make reasonable payments toward the support of the child.

"Willfully failed to support" or "willfully failed to make reasonable payments toward such child's support" means the willful failure, for a period of four consecutive months, to provide monetary support or the willful failure to provide more than token payments toward the support of the child. "Willfully failed to visit" means the willful failure, for a period of four consecutive months, to visit or engage in more than token visitation.

This bill specifies that a person who attempted to support or visit a child but who was prevented by the acts of others or circumstances beyond the person's control will not be considered to have willfully failed to support or visit the child. This bill further specifies that a person who has filed a petition to gain custody of such person's child within the four-month period will be considered to have demonstrated the person's intent not to abandon the child, and this demonstrated attempt supersedes any failure on the part of the parent to support or visit the child during the four-month period.

Present law provides that an order terminating a person's parental rights is binding, except based upon the timely appeal of the order, as permitted by law. No such order may be overturned after one year from the date of the entry of the final order. This bill specifies that the termination order may be overturned more than one year after the entry of the order, so long as it is pursuant to the appeal of the order.

Present law defines "foster care" as the temporary placement of a child in the custody of the department of children's services or any agency, institution, or home, whether public or private, for care outside the home of a parent or relative, by blood or marriage, of the child, whether such placement is by court order, voluntary placement agreement, surrender of parental rights, or otherwise. This bill specifies that the placement of the child in foster care may be initiated by the child's parent or by another party. This bill further specifies that foster care encompasses placement of the child in the custody of any agency, including the department, and encompasses placement arrangements facilitated by a private placement agency.

Present law requires that the permanency plan for any child in foster care include a statement of responsibilities between the parents, the agency, and the caseworker of such agency. This bill additionally requires that the

statement outline the parties' responsibilities regarding visitation and payment of support and any penalties for failure to abide by those responsibilities on the part of either the natural parents or the foster parents. The bill further requires that the statement include an assessment of the ability of the natural parent to pay child support. If support is excused for cause because the primary reason for placement of the child is financial circumstance of the natural parents, that information would be included in the statement. If the natural parent is voluntarily placing the child in foster care, the statement would include a declaration that the placement is temporary and that the parent has the right to seek to regain custody of the child.

This bill provides an affirmative defense to the enforcement of any written contract that the contract was written in a language that was not the native language of a party to the contract and that such circumstance resulted in reasonable doubt that the person understood his or her legal rights and responsibilities under the contract.

ON JUNE 4, 2007, THE HOUSE ADOPTED AMENDMENTS #1, #2, AND #3 AND PASSED HOUSE BILL 351, AS AMENDED.

AMENDMENT #1 provides that the standard for determining whether a person has attempted to support or attempted to visit a child and has been deterred is the "totality of the circumstances." This amendment, therefore, requires a court to find that a person has not "willfully failed to support" or "willfully failed to visit" a child, respectively, if, after an evidentiary hearing, the trier of fact reasonably finds based on the totality of the circumstances that a person attempted to support the child or attempted to visit the child and was deterred by the acts of others or by circumstances beyond the person's control.

This amendment removes this bill's provision specifying that a person who has filed a petition to gain custody of the person's child within the four-month period for establishing abandonment has demonstrated the person's intent not to abandon the child.

This amendment removes the changes to the definition of "foster care" in this bill and removes the additional requirements for permanency plans.

This amendment also removes the affirmative defense to the enforcement of written contract based on failure to understand a non-native language. This amendment establishes a requirement, however, that a court ascertain, prior to a hearing for termination of parental rights, whether or not the parent has limited English proficiency and the extent to which the parent or parents understand the proceedings filed against them. If the court determines that the parent has limited English proficiency and does not understand the proceeding because of language barriers, the parent or parents must be provided a court interpreter for the entire proceeding. The costs of the interpreter will be paid for an indigent parent pursuant to the supreme court rule regarding appointments and compensation for expenses incident to representation of indigent defendants.

AMENDMENT #2 revises this bill to refer to a person being "thwarted" instead of "deterred" in attempts to visit or support and to require that the trier of fact find that the person was so thwarted by "the acts of others AND by circumstances beyond the person's control" (instead of by "the acts of others OR by circumstances beyond the person's control.")

AMENDMENT #3 adds a short title to this bill, the "Anna Mae He Act."